

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

RECEIVED

SEP - 6 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Pacific Bell Petition for Rulemaking)
to amend Section 69.106 of the)
Commission's Rules)

RM-8496

DOCKET FILE COPY ORIGINAL

GTE's REPLY COMMENTS

GTE Service Corporation and its
affiliated GTE domestic telephone
operating companies

Andre J. Lachance
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5276

September 6, 1994

THEIR ATTORNEY

No. of Copies rec'd
List A B C D E

of 4

TABLE OF CONTENTS

	Page
Summary	iii
I. The Commission Should Promptly Address the Issue Raised by the Pacific Bell Petition	2
II. The Pacific Petition and Comments Demonstrate that the Commission Should Begin a Proceeding to Examine Whether a Per Call Setup Rate Element is Appropriate	4
III. Changed Circumstances Dictate the Commission Should Now Review the Need for a Call Set up Rate Element.....	8
IV. There is no Price Cap Burden to Overcome Before the Commission Can Adopt a Revised Rate Structure.....	11

SUMMARY

GTE believes that access charge reform is necessary to keep pace with an evolving marketplace. GTE therefore joins several commenters in supporting a comprehensive review of the Commission's access charge rules. Absent such a proceeding, the Commission should act immediately on pending petitions for waiver or modification of Part 69 rules, including the Pacific Bell Petition.

GTE disagrees with parties that allege that the Pacific Bell Petition does not contain enough supporting data to merit further consideration by the Commission. The Pacific Bell Petition fully satisfies Commission content requirements for petitions for rulemaking. The data submitted by Pacific Bell and others, as well as Commission findings in other proceedings, provide all the support necessary for the Commission to conclude that a call setup rate element should be explored further in a rulemaking proceeding.

Arguments that a flat-rated call setup rate element would contravene long-standing Commission policy favoring usage sensitive local switching charges and that the call set up rate element has been considered and rejected previously by the Commission are wrong. The long-standing Commission policy with respect to access charges is that non-usage sensitive costs should not be recovered through usage sensitive rates. Also, while the Commission has twice rejected petitions for waiver seeking a call setup rate element, those decisions were procedural and never reached the merits of a call setup rate element.

Finally, GTE disagrees with parties that allege the Pacific Bell Petition is deficient because Pacific Bell fails to meet its burden of showing that the rule change will not unreasonably discriminate against any service user. First, no such burden of proof exists -- commenters attempt to construct a barrier to the petition by manipulating language in the Price Cap order pertaining to tariff effective dates. Even if such a burden did apply to proposed rate structure changes, the Pacific Bell Petition would satisfy the burden because it attempts to put an end to discrimination against callers with longer than average call duration.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

RECEIVED

SEP - 6 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)	
)	
Pacific Bell Petition for Rulemaking)	RM-8496
to amend Section 69.106 of the)	
Commission's Rules)	

GTE's REPLY COMMENTS

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE"), with reference to Comments filed on August 22, 1994, submit the following reply comments regarding the Petition for Rulemaking of Pacific Bell.¹

BACKGROUND

In its petition, Pacific Bell asks the Commission to begin a rulemaking proceeding aimed at amending Part 69.106 of the Commission's Rules² to encompass a per-message call setup charge in addition to the current per-minute usage charge.³ Pacific Bell states that the number of short duration calls in its service territory has increased dramatically in recent years, and that the cost of establishing a call is not recovered by a great many short duration calls.⁴ As a result, Pacific Bell explains, the current rate structure "creates an uneconomic scheme, such that long calls subsidize short calls."⁵

¹ Pacific Bell's Petition for Rulemaking to Amend Section 69.106 of the Commission's Rules, filed June 30, 1994, (hereinafter "Pacific Bell Petition").

² 47 C.F.R. Section 69.106(a).

³ Pacific Bell Petition at 1.

⁴ Id. at 3-7.

⁵ Id. at 1.

Eleven parties filed Comments on August 22, 1994.⁶ GTE herein addresses several issues raised in those Comments.

DISCUSSION

I. THE COMMISSION SHOULD PROMPTLY ADDRESS THE ISSUE RAISED BY THE PACIFIC BELL PETITION.

Although parties disagree as to the specific course of action the Commission should take, many commenters favor the Commission taking some form of action to reform the current access charge rules, including the local switching rate element that is the focus of the Pacific Bell Petition.⁷ Even several parties opposing the Pacific Bell Petition argue that any Commission review of the issue that might occur, must take place "in the context of a more comprehensive access charge reform proceeding."⁸ Only three commenters flatly oppose any examination of a call setup rate element.⁹

GTE believes that access charge reform is needed to keep pace with the marketplace. Telecommunications today is marked by the introduction of new network technologies, the availability of new services, and the evolution of new network usage patterns. These factors, acting in concert with Commission policies encouraging

⁶ The names of commenters have been abbreviated herein. Their full names appear in Attachment A.

⁷ See Ad Hoc Comments at 2; AT&T Comments at 1; Bell Atlantic Comments at 1; GTE Comments at 3-4; SWBT Comments at 1-2. These parties generally support Commission action on this issue.

⁸ See CompuServe Comments at 4-6, 7; Financial Services Providers Comments at 4-5; TNS Comments at 4-5.

⁹ FPMC Comments at 1; MCI Comments at 2; National Data Comments at 4.

competition,¹⁰ have dramatically changed the telecommunications landscape since the access charge regime was adopted over a decade ago. Unfortunately, access charge reform has not kept pace. To date, the Commission has been either unable or unwilling to begin the process of comprehensive reform, nor has it taken action on individual requests for waiver or amendment of individual access charge rules.¹¹ As a result, local exchange carriers ("LECs") find themselves in an unenviable position whereby each time one seeks to adopt a revised price structure or to introduce a new service, it must obtain either a waiver or a modification of Part 69 access charge rules.

GTE asks the Commission to act quickly to reform its access charge rules. Reform is necessary because access service customers are frustrated with LEC inability to offer services at competitive prices and are becoming impatient waiting for new services or new pricing options to become available. These customers are choosing other telecommunications suppliers that are able to respond quickly to their

¹⁰ See, e.g., Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Transport Phase II, Third Report and Order, released May 27, 1994, FCC 94-118, at para. 2, ("This measure represents another step in a series of efforts to remove barriers to competition in interstate access services").

¹¹ See Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, dated March 1, 1993, (FCC Public Notice DA-93-481, dated April 27, 1993); Petition for Waiver of the GTE Telephone Operating Companies, dated August 3, 1993 (FCC Public Notice DA 93-977, dated August 12, 1993); The NYNEX Telephone Companies Petition for Waiver of Part 69 of the Commission's Rules to Offer the Vermont Market Plan, dated August 13, 1993 (FCC Public Notice DA 93-105, dated August 13, 1993); Petition of MFS Communications Company, Inc. for a Notice of Inquiry and En Banc Hearing, dated November 1, 1993, RM-8338; Petition of American Telephone and Telegraph Company for Rulemaking, dated November 24, 1993, RM-8408; The NYNEX Telephone Companies Petition for Waiver of Part 61 and 69 of the Commission's Rules to Implement a Universal Service Preservation Plan, dated December 15, 1993 (FCC Public Notice DA 93-1537, dated December 22, 1993); Pacific Bell Petition for Waiver of Part 69 of the Commission's Rules to Offer Optional Pricing Plans, dated December 23, 1993 (FCC Public Notice DA 93-1580, dated December 30, 1993).

needs. To remedy the current situation, GTE urges the Commission to undertake a comprehensive review of the access charge system.¹²

In summary: Immediate Commission action is necessary to begin the process of a comprehensive review of the access charge structure.

II. THE PACIFIC PETITION AND COMMENTS DEMONSTRATE THAT THE COMMISSION SHOULD BEGIN A PROCEEDING TO EXAMINE WHETHER A PER CALL SETUP RATE ELEMENT IS APPROPRIATE.

A number of parties urge the Commission to reject the Pacific Bell Petition on grounds that Pacific Bell does not provide enough supporting information to justify further examination of the appropriateness of a call setup rate element.¹³ These arguments are without merit. Commission rules do not require Pacific Bell or any petitioner to compile exhaustive data from all possible sources in support of the proposed rule. Rather, petitioners seeking to add, modify, or delete Commission Rules must:

set forth the text or substance of the proposed rule, amendment, or rule to be repealed, together with all facts, views, arguments and data deemed to support the action requested, and shall indicate how the interests of petitioner will be affected.¹⁴

In the instant case, Pacific Bell complied with Commission rules regarding petitions for rulemaking. It set forth the text or substance of the proposed rule;¹⁵

¹² Otherwise the Commission should immediately address the backlog of waiver and rulemaking requests, including the Pacific Bell Petition.

¹³ Ad Hoc Comments at 9-11; MCI Comments at 3-5; National Data Comments at 3-4.

¹⁴ 47 C.F.R. § 1.401(c).

¹⁵ Pacific Bell Petition at 1.

provided factual data, information, and arguments supporting the proposed rule;¹⁶ and indicated how the proposed rule change would affect Pacific Bell.¹⁷ Indeed, much of the factual support and the arguments in favor of adopting the proposed rule change were substantiated in comments filed in support of the Pacific Bell Petition. For example, exchange carriers indicate that the short duration call phenomenon Pacific describes is not unique to Pacific's service area, but exists within service territories representing approximately a third of the local exchange carrier industry.¹⁸ Moreover, AT&T confirms that the growth rate for the number of messages has outstripped the growth rate of total minutes.¹⁹

In addition, GTE indicated in its initial comments that the need for a cost-based call setup rate structure is underscored by the present and future deployment of technologically advanced services that rely heavily on call setup.²⁰ The Commission has recognized that call setup functions will become increasingly important as new services and technologies are deployed. In the Intelligent Networks proceeding, for example, the Commission stated that "with intelligent networks, some of the intelligence currently in software housed in every switch is placed instead in fewer, centralized

¹⁶ Id. at 2-8.

¹⁷ Id. at 8-10.

¹⁸ Bell Atlantic Comments at 2; GTE Comments at 6.

¹⁹ AT&T's data shows a decline in access minutes per message for each BOC. AT&T Comments at 4-5, Appendix 1. See also Ad Hoc Comments at 8.

²⁰ See GTE Comments at 6-7.

databases. The centralized databases interact with LEC switches to route calls."²¹

Moreover, in an analogous situation in the 800 Database proceeding, the Commission found that charges for 800 data base queries — part of the call setup function for 800 calls — should be assessed on a per call basis.²² Given the factual information provided by Pacific Bell and others and Commission precedent, it is clear not only that Pacific Bell met its requirement under § 1.401(c) of the Commission's Rules, but also that a closer examination of the issues raised in the Pacific Bell Petition is in the public interest.

Not surprisingly, comments opposing the Petition attack the content of the Pacific Bell Petition and the factual foundation on which it rests. These parties attempt to further their individual interests by suggesting that harm would come to some parties if the Commission adopts a new call setup rate structure. For example, one party criticizes information contained in the Pacific Bell Petition by attempting to compare it to stagnant data from other LECs.²³ Two parties state that more complete information regarding Pacific's costs and calling patterns is needed.²⁴ Some state that that a per

²¹ Intelligent Networks, Notice of Proposed Rulemaking, CC Docket No. 91-346, 8 FCC Rcd 6813, 6813 (1993).

²² Provision of Access for 800 Service, CC Docket No. 86-10, Second Report and Order, 8 FCC Rcd 907, 909 (1993). There, the Commission stated: "We adopt a per query charge for 800 data base because the data base query is a distinct part of the set up of an 800 call."

²³ MCI Comments at 3-5. MCI also claims that a price cap LEC's ability to raise or lower prices on a streamlined basis by as much as 5 percent per year somehow should bear on the Commission's decision to act on the Pacific Bell Petition. The limited ability to raise or lower the per minute rate level, however, accomplishes nothing toward recovering the costs of call setup activities on a cost-causative basis.

²⁴ Ad Hoc at 8-10; Financial Services Providers at 9. Ad Hoc claims that "[i]t is unlikely that any of Pacific's customers have average holding times in the 15 to 20 second range" (emphasis in original).

call setup rate element "would likely promote, rather than discourage, uneconomic bypass,"²⁵ while others claim that it would penalize efficient use of the switched public network.²⁶

The fact that a few parties disagree with the Pacific Bell Petition is not a reason for the Commission to deny the petition. Nor is the fact that Pacific has failed to provide the Commission with every possible piece of data available to support its proposed rule. As discussed above, Pacific Bell satisfied every requirement in the Commission's Rules. The reason the Commission seeks public comment on rulemaking petitions is to evaluate the merits of opening a proceeding to consider adopting the proposed rule. Considering the merits of the proposed rule, therefore, is primarily left to the rulemaking proceeding.²⁷ More complete industry-wide data, and challenges to that data, can and should be solicited and considered in the context of the rulemaking proceeding.

Ad Hoc Comments at 10, n.14. See also National Data Comments at 2-5. Although National Data claims that Pacific's data is unsubstantiated, it substantiates part of Pacific's data by stating that it uses AT&T's 800 Validator Service for short duration calls. National Data Comments at 2. AT&T 800 Validator Service reduces the normal 30 second Minimum Average Time Requirement associated with its 800 service to six seconds. AT&T Communications Tariff F.C.C. NO. 2, Section 6.4.3.E, 3rd Revised Page 149.1, Effective March 11, 1994. Thus, National Data's use of 800 Validator Service supports Pacific Bell's claim that average call duration is getting shorter.

²⁵ FPMC Comments at 5-6; CompuServe Comments at 9.

²⁶ FPMC Comments at 7-8; Ad Hoc Comments at 14-15. Ad Hoc states that the current rate structure "rewards the development of applications that shorten the holding time of calls, thereby encouraging efficient use of the network." Ad Hoc Comments at 14. This argument, in particular, significantly misses the mark. First, this argument ignores the fact that other access rate elements are based on call duration. Thus, incentives will still exist to reduce call holding times. Second, this argument fails to recognize that the only reason why reductions in call duration reduce call setup costs is because of the uneconomic method employed by Part 69 to assess such costs. The Commission must decide in considering the proposed rule whether overall network efficiency is improved by moving to a cost-based rate structure, or by maintaining a system not founded in economic reality.

²⁷ Pacific Bell cannot be expected in its petition to provide information on other exchange carriers traffic patterns, total call volumes, costs, or market conditions. Nor can it be expected to provide an

In summary: Sufficient information exists that demonstrates the need for a rulemaking proceeding to examine the merits of opening a rulemaking proceeding to consider adopting a per-message call setup charge.

III. CHANGED CIRCUMSTANCES DICTATE THE COMMISSION SHOULD NOW REVIEW THE NEED FOR A CALL SET UP RATE ELEMENT.

FFMC and Ad Hoc state that the Commission has a long-standing policy of usage sensitive local switching charges, and claim that adoption of a flat-rated call set up rate element would contravene this policy.²⁸ FFMC and two other parties also claim that the Commission has previously considered and rejected adoption of this very rate element.²⁹ Neither of these claims accurately portray past Commission policies or actions.

In 1983, the Commission adopted both usage and non-usage sensitive access rate elements.³⁰ The Commission identified the need to avoid recovering non-usage sensitive costs from usage sensitive rates.³¹ The Pacific Bell Petition is completely

analysis of the decisions that firms now using short duration calls might make in response to a changed rate structure. That is exactly the purpose of a rulemaking procedure -- to gather all relevant information needed by the Commission to evaluate the merits of a proposed rule.

²⁸ FFMC at Comments at 6-8; Ad Hoc Comments at 13.

²⁹ FFMC Comments at 7; MCI Comments at 5; CompuServe Comments at 8.

³⁰ See MTS and WATS Market Structure, CC Docket 78-72, Phase I, Third Report and Order, 93 F.C.C. 2d 241 (1983).

³¹ Id. The Commission stated that "[e]fficient pricing requires both usage sensitive and non-usage sensitive charges for recovery of access costs. (footnote omitted) The costs imposed on the nation's telecommunications system, and ultimately upon the general public, by our present usage sensitive method of recovering these NTS costs pose a substantial danger to the long term viability of our nation's telephone systems." Id. at 251-252. The Commission emphatically reaffirmed this policy on reconsideration. MTS and WATS Market Structure, CC Docket 78-72, Phase I, Memorandum Opinion and Order, 97 F.C.C. 2d 682 (1983). There, the Commission stated, inter alia, that "[t]he

consistent with this long-standing Commission policy. It seeks to achieve the objective of removing the costs incurred for "[e]ach and every call ... regardless of the duration of the call" from the per minute of use rate.³² Thus, rather than being a departure from Commission policy as Ad Hoc claims, Pacific merely seeks to adjust today's rate structure to be consistent with the long-standing policy of recovering usage sensitive costs from usage sensitive rates, and non-usage sensitive costs by use of non-usage sensitive rates.

Ad Hoc also states that usage sensitive charges were adopted at the outset of the access charge regime, and that "[t]he Commission, despite numerous reviews of the Local Switching rate elements, has never wavered from this judgment."³³ Ad Hoc misrepresents the Commission's finding. In the proceeding cited by Ad Hoc, the FCC combined three rate elements into a single access element. In discussing those objections, the Commission stated that it "will, of course, entertain rulemaking or waiver petitions in the future to consider the creation of separate elements that serve a purpose in the marketplace."³⁴ Thus, the Commission's long-standing policy has been

driving force behind our decision to move toward flat charge [sic] is our commitment to promoting efficient use of the nationwide telecommunications network . . ." *Id.* at 686.

³² Pacific Bell Petition at 2.

³³ Ad Hoc Comments at 19.

³⁴ Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, to Conform it With Part 36, Jurisdictional Separations Procedures, CC Docket No. 87-113, Report and Order, FCC 87-271, 63 Rad.Reg.2d (P&F) 1016, 1033 (1983).

to invite parties to petition for changes that might be necessary, and to examine proposed changes in the public forum.

Claims that the Commission previously denied requests from Bell Atlantic and US West for a call set up charge also misrepresent those decisions. In 1989, Bell Atlantic asked for a waiver of the rules to permit use of a call setup rate element.³⁵ The Commission rejected this waiver request on the grounds that: (1) the waiver process was not the appropriate vehicle for effecting such a substantial change in the rules; and (2) Bell Atlantic failed to show that it faced unique circumstances.³⁶ The Commission made a similar finding in 1991, denying US West's petition for waiver seeking to establish a new access rate element for Common Channel Signaling call setup service.³⁷

In neither case did the Commission examine the merits of a call setup rate element. In fact, the Commission concluded that Bell Atlantic should have filed a petition for rulemaking, and stated that its decision to deny the waiver did not prejudice whether the rate structure suggested by Bell Atlantic would be desirable.³⁸ The

³⁵ Petition for Waiver of Sections 69.106 and 69.205 of the Commission's Rules to Permit a Call Setup Charge, filed by the Bell Atlantic telephone companies, dated May 24, 1989.

³⁶ Bell Atlantic Telephone Companies Petition for Waiver of Sections 69.106 and 69.205 of the Commission's Rules To Permit a Call Setup Charge, Memorandum Opinion and Order, 4 FCC Rcd. 7210, 7211 (1989) (hereinafter "Bell Atlantic Waiver Order").

³⁷ US West Communications, Inc. Petition for Waiver of Part 69 of the Commission's Rules, Order, 7 FCC Rcd 4043, 4044 (1992).

³⁸ Bell Atlantic Waiver Order, 4 FCC Rcd 7210, 7212 (1989).

Commission was clearly prepared to address that question if Bell Atlantic had subsequently filed a petition for rulemaking.

In summary: Comments misrepresent the Commission's long-standing policy regarding the access rate structure. Commission policy has been to modify the access charge regime whenever changed circumstances warrant such revision. The merits of a call setup rate element were not examined by the Commission in recent waiver petition filings by Bell Atlantic and US West.

IV. THERE IS NO PRICE CAP BURDEN TO OVERCOME BEFORE THE COMMISSION CAN ADOPT A REVISED RATE STRUCTURE.

FFMC and CompuServe allege that Pacific Bell's petition for rulemaking should be dismissed summarily because Pacific Bell failed to meet its burden of proving that the restructured service will not unreasonably discriminate against any service user. These parties argue that Pacific Bell must prove that the restructured service will not adversely affect competition in other markets.³⁹ GTE disagrees. Both FFMC and CompuServe take statements out of context from the Commission's LEC Price Cap Order⁴⁰ in an attempt to construct an affirmative duty on LECs.

FFMC and CompuServe cite language from the LEC Price Cap Order embellishing the importance of insuring that interstate access charges promote competition by eliminating unreasonable discrimination between service users.⁴¹ The

³⁹ FFMC Comments at 8-10; CompuServe Comments at 9-10.

⁴⁰ Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990) (hereinafter "LEC Price Cap Order").

⁴¹ FFMC Comments at 8-9; CompuServe Comments at 10; both citing, LEC Price Cap Order, 5 FCC Rcd at 6826.

paragraph cited supports the preceding paragraph which imposes a 45-day notice requirement on price cap tariffs containing restructured services. However, rather than imposing an affirmative duty on LECs to prove that no unreasonable discrimination will result from a proposed restructuring as FFMC and CompuServe would suggest, the cited language merely justifies the extended notice period for restructured services tariffs by stating that the extra time is needed to allow the Commission to ensure against unreasonable discrimination. Nowhere in the cited paragraph, or anywhere else, does the Commission impose a duty on LECs to prove the absence of unreasonable discrimination either in price cap tariff filings or in petitions for rulemaking.

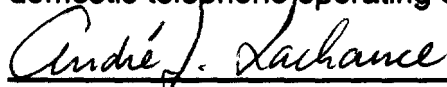
At best, the paragraph cited by FFMC and CompuServe supports the notion that access charges should not unreasonably discriminate among service providers in other markets.⁴² The rule change sought by Pacific Bell is consistent with this notion. Pacific Bell's proffered rule change seeks to bring an end to situation whereby callers with shorter than average call length pay less than the cost of their calls. As such, the suggested rule change seeks to end discrimination against callers with longer than average calls and in favor of shorter duration callers. Accordingly, the Commission should reject the arguments made by FFMC and CompuServe that the Pacific Bell petition failed to prove that unreasonable discrimination will not result from the proposed rule change.

⁴² GTE notes that the duty to file tariffs that do not unreasonably discriminate against any person is one imposed upon all tariff filings – not just restructured services under the price cap rules – by operation of section 202(a) of the Communications Act. 47 U.S.C. § 202(a).

In summary: Commission rules do not require petitioners seeking modification of Part 69 rules to prove that proposed rule changes will not unreasonably discriminate against service providers in other markets. Even if such a requirement did exist, it is clear that the Pacific Bell Petition seeks to terminate rather than promote unreasonable discrimination.

Respectfully submitted,

GTE Service Corporation and its affiliated
domestic telephone operating companies

A handwritten signature in cursive script, reading "Andre J. Lachance", is written over a horizontal line.

Andre J. Lachance
1850 M. Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 463-5276

September 6, 1994

Their Attorney

PARTIES FILING COMMENTS

Ad Hoc Telecommunications Users Committee ("Ad Hoc")

AT&T Corporation ("AT&T")

The Bell Atlantic Telephone Companies ("Bell Atlantic")

California Bankers Clearing House, MasterCard International Incorporated, New York Clearing House Association, and Northwest Corporation ("Financial Services Providers")

CompuServe Incorporated ("CompuServe")

First Financial Management Corporation ("FFMC")

GTE Service Corporation ("GTE")

MCI Telecommunications Corporation ("MCI")

National Data Corporation ("National Data")

Southwestern Bell Telephone Company ("SWBT")

Transaction Network Services, Inc. ("TNS")

Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "GTE's Reply Comments" have been mailed by first class United States mail, postage prepaid, on the 6th day of September, 1994 to all parties of record.



Judy R. Quinlan